C-7772-1
04/14/2015

CITY CLERK
ORIGINAL

ADOT File No.: IGA/ JPA 10-034-I
ADOT CAR No.: 13-0000545-I
Amendment No. One: 13-0003925-I
AG Contract No.: P0012011002007
Project: Pathway
Section: Grand Canal between 107th Avenue and SR101 in Glendale
Federal-aid No.: TEA CM TA GLN-0(203)T
ADOT Project No.: SL619 01D 02D 01C
TIP/STIP No.: GLN09-818; GLN08-802
CFDA No.: 20.205 - Highway Planning and Construction
Budget Source Item No.: 71615

AMENDMENT NO. ONE
TO
INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE

THIS AMENDMENT NO. ONE to INTERGOVERNMENTAL AGREEMENT (the "Amendment No. ONE"), entered into this date April 22, 2015, pursuant to Arizona Revised Statutes §§ 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF GLENDALE, acting by and through its MAYOR and CITY COUNCIL (the "City"). The City and State are collectively referred to as the "Parties."

WHEREAS, the INTERGOVERNMENTAL AGREEMENT, JPA/IGA 10-034I, A.G. Contract No. P0012011002007, was executed on October 18, 2011, (the "Original Agreement");

WHEREAS, the State is empowered by Arizona Revised Statutes § 28-401 to enter into this Amendment No. One and has delegated to the undersigned the authority to execute this Amendment No. One on behalf of the State;

WHEREAS, the City is empowered by Arizona Revised Statutes § 48-572 to enter into this Amendment No. One and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Amendment No. One and has authorized the undersigned to execute this Amendment No. One on behalf of the City; and

NOW THEREFORE, in consideration of the mutual agreements expressed herein, the Parties desire to amend and restate the Original Agreement in its entirety for the purpose of changing construction, contract procurement and administration from City administration to State administration and to document revisions of each Party's responsibilities including the additional local funds required to modify the contract documents to facilitate the administration of bidding, contract award, and construction of the Project by the State.

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The work proposed under this Agreement consists of the construction of a ten (10) foot-wide concrete pathway along Grand Canal between 107th Avenue and State Route 101L that is divided into two segments. The first segment will be along the south side of Bethany Home Outfall Channel extending from 107th Avenue east to an existing Salt River Project (SRP) maintenance road (approximately 103rd Avenue alignment). The second segment will be along the south side of the Grand Canal extending from 99th Avenue east to SR 101L where it will connect to an existing pathway in the Grand Canal Linear Park that currently dead ends near the northbound freeway on-ramp, hereinafter referred to as the "Project". Amenities include landscaping and irrigation, and signing. These two segments will be separated by a portion of SRP-owned asphalt-paved maintenance road that exists along the south side of the Grand Canal between (an extension of) 103rd Avenue and 99th Avenue. The City is currently seeking a land license agreement with SRP to allow pedestrians and bicyclist to utilize the maintenance road as part of the pathway. The City will be an active, paid party in assisting the State in performing the construction inspections. The City will continue to administer the design and the State will advertise, bid and award the construction of the Project. The City will maintain the pathway and provide electrical power and water required for irrigation.

4. The Project lies within the boundary of the City and has been selected by the,City and the survey of the project site has been/or will be completed. The plans, estimates and specifications for the Project will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.

5. The City, in order to obtain federal funds for the design and/or construction of the Project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering and administration costs (CE).

6. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the City and to authorize such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the City.

7. The Parties shall perform their responsibilities consistent with this Agreement and any change or modification to the Project will only occur with the mutual written consent of both Parties.

8. The federal funds will be used for the scoping/design and construction of the Project, including the construction engineering and administration cost (CE). The estimated Project costs are as follows:

SL619 02D (scoping/final design):

Federal-aid funds @ 100% (capped)	$ 250,000.00

SL619 01D scoping/final design):

ADOT Project Management & Design Review (PMDR) cost*	$ 50,000.00
Subtotal – Scoping/Final Design	**$ 300,000.00**

SL619 01C (construction):

Federal-aid funds @ 94.3% (capped)	$ 616,945.00
Federal-aid Funds for City Inspection Cost @ 94.3% (capped)	$ 15,277.00
City's match @ 5.7%	$ 38,215.00
City additional funds @ 100%	$ 20,453.00
Subtotal – Construction (State administered)**	**$ 690,890.00**
Estimated TOTAL Project Cost	**$ 990,890.00**
Summary:	
Total Estimated City **Funds**	**$ 108,668.00**
Total Federal Funds	**$ 882,222.00**

* (Included in the City Estimated Funds)
** (Includes 15% CE and 5% Project contingencies)

The City has paid and the State has received the City's PMDR costs of $50,000.00. Once the Project PMDR costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

The Parties acknowledge that the final Project costs may exceed the initial estimate(s) shown above, and in such case, the City is responsible for, and agrees to pay, any and all eventual, actual costs exceeding the initial estimate. If the final bid amount is less than the initial estimate, the difference between the final bid amount and the initial estimate will be de-obligated or otherwise released from the Project. The City acknowledges it remains responsible for, and agrees to pay according to the terms of this Agreement, any and all eventual, actual costs exceeding the final bid amount.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this Agreement, be the designated agent for the City, if such project is approved by FHWA and project funds are available.

b. Acknowledge that the City was previously authorized by the State to commence the design and approval process when the Project was designated as a local self-administered project, but that such approval has now been rescinded. Pursuant to this prior State authorization, the City prepared 15% plans, obtained a Categorical Exclusion for the Project and the Project was approved immediately advance to Stage III (60%) submittal to ADOT for review upon receiving a notice to proceed. The State agrees that, upon resubmittal by the City of any documentation previously submitted for the local self-administered Project expiration dates of clearances and approvals will be extended to meet the current project needs, provided any federally-mandated updates and modifications are submitted to support the Project as currently designed.

c. On behalf of the City, perform any additional tasks activities or work necessary to secure the approval of any additional documents required by FHWA to assist the City in qualifing the Project for the Federal funding and to provide the administration of the implementation of the Project, including but not limited to the construction contract procurement and administration of the financial aspects of the Project. Such documents may consist of but are not specifically limited to (1) revisions to the Project Assesment to modify the self-administration aspect of the Project; (2) update the project schedule and construction cost estimate; (3) certain time-sensitive environmental documents; (4) engineering reports, design plans estimates, and specifications; (5) right-of-way and utility clearance documentation, and (6) any other documents essential to the achieve the objectives of this Amendment.

d. Within thirty (30) days of receipt of approved invoices and no more than monthly, reimburse the City with remaining available federal funds for eligible costs incurred for **final design** of the Project. To date, the City has been reimburded with federal funds in the amount of **$235,236.00.** Total reimbursement to the City from Federal funds shall not exceed the federal capped amount of $250,000.00. Any costs incurred prior to the date of authorization for federal funding of the design by FHWA are not eligible for reimbursement, including ADOT's PMDR cost.

e. Upon notification from the City of the completion of design and prior to authorization, invoice the City, for the City's share of Project construction costs currently estimated at **$58,668.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs. De-obligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.

f. Upon receipt of the City's estimated share of the Project construction costs, submit all documentation required to FHWA with the recommendation that funding be approved for construction. The State will also request the maximum programmed federal funds for the construction of this Project. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

g. Upon authorization by FHWA, full deposit of the City's local funds, and with the aid and consent of the City and the FHWA, the State shall proceed to administer construction, advertise for, receive and open bids subject to the concurrence of the FHWA and the City, to whom the award is made for and enter into a contract(s) with a firm(s) for the construction of the Project.

h. Be granted, without cost requirements, the right to enter City right-of-way as required to conduct any and all construction and pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights of entry on to and over said rights-of-way of the City.

i. Notify the City the Project has been completed and is considered acceptable, coordinating with the City as appropriate to turn over full responsibility of the Project improvements. De-obligate or otherwise release any remaining federal funds from the construction phase of the Project within ninety (90) days of final acceptance.

j. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City will:

a. Upon execution of this Agreement, designate the State as authorized agent for the City.

b. Proceed to enter into a contract(s) for the additional design of the Project. Under direct supervision of a registered professional, administer contract(s) for the Project design by the currently contracted consultant and make all payments to the consultant(s). Should costs be deemed ineligible or exceed the maximum federal funds available, it is understood and agreed that the City is responsible for these costs. Costs related to post design services performed by said consultant are not eligible for federal reimbursement, cannot be applied to the local match and, as such, will be entirely at the City's expense. A copy of the contract modification and consultant's notice to proceed shall be submitted to the State within thirty (30) days of issue to the consultant.

c. Upon notice to proceed, move forward with the design for the project and obtain the necessary clearances not already obtained to construct the project. Provide to the State design plans, specifications and other such documents and services required for the State to advertise the project for bids, award a contract, and administer construction of the Project, including design plans and documents required by FHWA to qualify projects for and to receive federal funds. Consult with and copy State on any addendums to be issued during bidding and supplemental agreements issued during construction. Respond to State design review comments as appropriate.

d. Invoice the State for reimbursement of eligible, incurred Project costs at least once every ninety (90) days throughout the scoping/design phase of the Project, or within thirty (30) days of payment to a contractor or consultant. Provide all necessary backup documentation with said invoice. Costs incurred prior to the date of federal funds authorization are not eligible for reimbursement. Total invoiced costs may not exceed **$250,000.00**, the amount of federal funds programmed for the Project, of which **$235,236.00** has already been paid to the City.

e. Upon completion of design, within thirty (30) days of receipt of an invoice from the State and prior to bid advertisement, remit to the State, the City's Project construction costs, currently estimated at **$58,668.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

f. Be responsible for all costs incurred by the State in performing and accomplishing the work as set forth under this Agreement, not covered by federal funding. Should costs be deemed ineligible or exceed the maximum federal funds available, it is understood and agreed that the City is responsible for these costs, payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

g. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and also certify that all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, shall be removed from the proposed right-of-way, or will be removed prior to the start of construction, in accordance with The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended; 49 CFR 24.102 Basic Acquisition Policies; 49 CFR 24.4 Assurances, Monitoring and Corrective Action, parts (a) & (b) and ADOT ROW Manual: 8.02 Responsibilities, 8.03 Prime Functions, 9.07 Monitoring Process and 9.08 Certification of Compliance. Coordinate with the appropriate State's Right-of-Way personnel during any right-of-way process performed by the City, if applicable.

h. Grant the State, its agents and/or contractors, without cost, the right to enter City rights-of-way, as required, to conduct any and all construction and preconstruction related activities, including without limitation, temporary construction easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.

i. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of scope of the work requested by the City. Such changes require the prior approval of the State and FHWA. The City shall also be responsible for any contractor claims for additional compensation caused by Project delays attributable to the City. Payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

j. Provide inspection services deemed eligible by the State for City participation, and be reimbursed for these services. All ADOT policies and procedures deemed to be relevant by the State for these services will be applicable as coordinated with the Phoenix Construction District (District) and the ADOT Construction Group. The City, District and Construction Group must mutually approve the city employees who are proposed by the City to assist the State in performing the construction inspections. The City Engineering Director must provide the ADOT Construction Group (for pre-approval) all required and current certifications and chargeable rates (labor and equipment). The City Inspector will report to the ADOT Resident Engineer and must comply with all ADOT hardware/software computer requirements; this includes keeping the computer and any information in as secure location, The City Inspector will remain an employee of the City and will not be considered an employee of the Arizona Department of Transportation during the term of this Agreement. The City will invoice monthly for reimbursement, all charges must be kept current for both payment and federal reporting purposes. The City will be notified of all approvals by the ADOT Construction Group.

k. Upon completion of construction, the City shall provide for, at its own cost and as an annual item in its budget, perpetual and proper maintenance of the pathway, landscaping, and irrigation improvements. Maintenance of the landscaping shall be in accordance with accepted horticultural practices including but not limited to keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying insecticides/herbicides to combat diseases and other pests, pruning, and replanting as required to maintain the landscape as it was designed and established at the completion of the Project, and performing pathway pavement and sidewalk repairs as required to keep the pavements compliant with the Americans with Disabilities Act Accessibility Guidelines.

l. Be responsible for the furnishing of electrical power and water necessary to maintain and operate the irrigation system including but not limited to testing, adjustments, and repairs necessary to keep system in proper working order.

m. Upon completion of the construction phase of the Project, provide an electronic version of the as-built plans to Arizona Department of Transportation Statewide Project Management Group, 205 S 17th Ave, Mail Drop 614E, Phoenix, Arizona 85007.

n. Pursuant to 23 USC 102(b), repay all federal funds reimbursements for preliminary engineering costs on the Project if it does not advance to right-of-way acquisition or construction within ten (10) years after federal funds were first made available.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Project and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award of the Project construction contract, upon thirty (30) days written

notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid on behalf of the City and the fulfillment of any other responsibilities of the State as specifically set forth herein; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless, defend and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non-performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the City , any of its agents, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. The cost of scoping, design, construction and construction engineering work under this Agreement is to be covered by the federal funds set aside for this Project, up to the maximum available. The City acknowledges that the eventual actual costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by the federal government as eligible for federal funds. Therefore, the City agrees to furnish and provide the difference between actual costs of the Project and the federal funds received.

4. Should the federal funding related to this Project be terminated or reduced by the federal government, or Congress rescinds, fails to renew, or otherwise reduces apportionments or obligation authority, the State shall in no way be obligated for funding or liable for any past, current or future expenses under this Agreement.

5. The cost of the project under this Agreement includes indirect costs approved by the FHWA, as applicable.

6. The Parties warrant compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, the City will provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.

7. The City acknowledges compliance with federal laws and regulations and may be subject to the Office of Management and Budget (OMB), Single Audit, Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Entities that expend $500,000 or more (prior to 12/26/14) and ($750,000 or more on or after 12/26/14) of Federal assistance (Federal funds, Federal grants, or Federal awards) are required to comply by having an independent audit. A copy (paper or electronic) of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services within the required deadline of nine (9) months of the sub recipient fiscal year end.

ADOT – FMS
Cost Accounting Administrator
206 S 17th Ave. Mail Drop 204B
Phoenix, AZ 85007
Singleaudit@azdot.gov

8. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

9. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes §§ 35-214 and 35-215 shall apply to this Agreement.

10. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

11. Non-Availability of Funds: Every obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the fulfillment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

12. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

13. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.

14. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

15. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

City of Glendale
Engineering Department
Attn: William A. Passmore
5850 West Glendale Avenue
Glendale, AZ 85301
Phone (623) 930-3647

THIS AMENDMENT NO. ONE shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

IN ACCORDANCE WITH Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the Parties are authorized under the laws of this State to enter into this Amendment No. One and that the Amendment No. One is in proper form.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. One the day and year first above written.

CITY OF GLENDALE

By _____
RICHARD A. BOWERS
Acting City Manager

STATE OF ARIZONA
Department of Transportation

By _____
STEVE BOCSHEN, P.E.
ITD Division Director

ATTEST:

By _____
PAMELA HANNA
Clerk

ADOT File No.: IGA/ JPA 10-034-I
CAR No.: 13-0000545-I
Amendment No. One: 13-0003925-I

ATTORNEY APPROVAL FORM FOR THE CITY OF GLENDALE

I have reviewed the above referenced Amendment No. One to the Original Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF GLENDALE, an agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes §§ 11-951 through 11-954 and declare this Amendment No. One to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Amendment No. One.

DATED this 15th day of April, 2015.

City Attorney

MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE GOVERNMENT DIVISION / TRANSPORTATION SECTION

SUSAN E. DAVIS
ASSISTANT ATTORNEY GENERAL
DIRECT LINE: 602-542-8855
E-MAIL: SUSAN.DAVIS@AZAG.GOV

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. P0012011002007 **(ADOT IGA/JPA 10-034-I, Amendment No. One)**, an Agreement between public agencies, the State of Arizona and City of Glendale, has been reviewed pursuant to A.R.S. §§ 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: April 22, 2015

MARK BRNOVICH
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:ln:#44251571
Attachment